

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

MARK W. DUBUQUE)
Plaintiff,) Cause No. 15-1793
v.)
UNITED STATES DEPARTMENT)
OF THE AIR FORCE)
and)
AIR FORCE OFFICE OF SPECIAL)
INVESTIGATIONS)
Defendants.)

COMPLAINT

COMES NOW Plaintiff Mark W. Dubuque (“Plaintiff”), by and through undersigned counsel, and, for his Complaint against the United States Department of the Air Force (“DOAF”) and the Air Force Office of Special Investigations (“AFOSI”), states as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff by DOAF and AFOSI.

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff is a resident of St. Louis County, Missouri and a citizen of the State of Missouri.

4. DOAF is a United States Government Military Department. DOAF is an agency within the meaning of 5 U.S.C. § 552(f).

5. AFOSI is a field operating agency of DOAF. AFOSI is an agency within the meaning of 5 U.S.C. § 552(f).

6. By separate letters dated March 31, 2015 to DOAF and AFOSI, Plaintiff submitted Freedom of Information Act (“FOIA”) requests. A Copy of the request to DOAF, along with the Certified Mail Receipt, is attached hereto as Exhibit 1. A Copy of the request to the AFOSI, along with the Certified Mail Receipt, is attached hereto as Exhibit 2.

7. Plaintiff has never received a response from DOAF.

8. AFOSI received Plaintiff’s FOIA request on April 10, 2015.

9. On June 3, 2015, AFOSI emailed Plaintiff acknowledging receipt of Plaintiff’s FOIA request, assigning said request Number “AF 2015-03554-F” and invited Plaintiff to contact AFOSI about the status of his request by electronic mail.

10. Having heard nothing from AFOSI, on July 13, 2015, Plaintiff contacted AFOSI by electronic mail to inquire about the status of his request. On that same date, AFOSI responded by electronic mail with a non-unique, form response stating, among other things, “the entire process could take a substantial amount of time.”

11. Having heard nothing from AFOSI following the above-mentioned July 13, 2015 electronic mail, Plaintiff again contacted AFOSI by electronic mail on November 8, 2015 to inquire as to the status of his request. Plaintiff has received no further response from AFOSI. A copy of all of Plaintiff’s email correspondence with AFOSI is attached hereto as Exhibit 3.

12. To date, DOAF and AFOSI have not provided the records requested by Plaintiff in his FOIA requests, notwithstanding the requirement that an agency response be received within twenty (20) working days.

COUNT I
Violation of FOIA / Preliminary and Permanent Injunction
(against DOAF)

13. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA requests to DOAF and AFOSI.

14. Defendant DOAF must be enjoined from withholding the requested records and ordered to disclose the requested records identified in Exhibit 1, and Exhibit 2 (to the extent DOAF is responsible for the AFOSI), in their entireties and make copies available to Plaintiff.

15. Plaintiff is entitled to his attorneys fees and costs under 5 U.S.C. § 552 (a)(4)(E).

16. This proceeding should be expedited under 28 U.S.C. § 1657.

17. Plaintiff has a likelihood of succeeding on the merits.

18. Plaintiff has been irreparably harmed and, absent the requested injunction, Plaintiff will continue to be irreparably harmed in the future.

WHEREFORE Plaintiff prays that this Court enter judgment in favor of Plaintiff and against DOAF, enjoin DOAF from withholding the requested records, order DOAF to disclose the requested records identified in Exhibit 1, and Exhibit 2 (to the extent DOAF is responsible for the AFOSI), in their entireties and make copies available to Plaintiff, expedite this proceeding as provided for in 28 U.S.C. § 1657, award plaintiff its costs and reasonably attorneys' fees incurred in this action, and grant such other relief as the Court deems just and proper.

COUNT II
Violation of FOIA / Preliminary and Permanent Injunction
(against AFOSI)

19. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 18 as though fully stated herein.

20. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to DOAF and AFOSI.

21. AFOSI must be enjoined from withholding the requested records and ordered to disclose the requested records identified in Exhibit 2 in their entireties and make copies available to Plaintiff.

22. Plaintiff is entitled to his attorneys fees and costs under 5 U.S.C. § 552 (a)(4)(E).

23. This proceeding should be expedited under 28 U.S.C. § 1657.

24. Plaintiff has a likelihood of succeeding on the merits.

25. Plaintiff has been irreparably harmed and, absent the requested injunction, Plaintiff will continue to be irreparably harmed in the future.

WHEREFORE Plaintiff prays that this Court enter judgment in favor of Plaintiff and against AFOSI, enjoin AFOSI from withholding the requested records, order AFOSI to disclose the requested records identified in Exhibit 2 in their entireties and make copies available to Plaintiff, expedite this proceeding as provided for in 28 U.S.C. § 1657, award plaintiff its costs and reasonably attorneys' fees incurred in this action, and grant such other relief as the Court deems just and proper.

Respectfully submitted,

CAPES, SOKOL, GOODMAN & SARACHAN, P.C.

By: /s/ Drey A. Cooley

Drey A. Cooley, # 58784MO
7701 Forsyth Blvd., 12th Floor
St. Louis, MO 63105
(314) 721-7701 – Telephone
(314) 721-0554 – Facsimile
Cooley@capessokol.com